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18 *Attorneys for Plaintiff, Regina Bailey*

19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF NEVADA**

21 REGINA BAILEY, individually and on
22 behalf of all others similarly situated,

23 Plaintiff,

24 vs.

25 HCA HEALTHCARE, INC.; and
26 VALLEY HEALTH,

27 Defendants.

28 Case No.: 2:21-cv-01740-RFB-BNW

**MOTION FOR LEAVE TO AMEND
TO ADD AN ADDITIONAL PARTY**

29 **COMES NOW**, the Plaintiff, by and through her undersigned counsel, and
30 pursuant to Local Rule 15-1 and Federal Rules of Civil Procedure 15(a)(2) and
31 16(b)(4), and hereby submits this Motion for Leave to File Amended Complaint to add
32 an additional party. In support of this motion, the Plaintiff states as follows:



1) On September 21, 2021, Plaintiff filed this case asserting Defendant, HCA,
 2 Healthcare, Inc., left approximately 40 prerecorded or artificial voice messages
 3 to call a cellular telephone number without the recipient's prior express consent
 4 (Doc 1).

5) On November 16, 2021, Plaintiff filed a motion to substitute party from HCA
 6 Healthcare, Inc. to HCA, Inc. (Doc 16) and that Motion was Granted by the
 7 Court.

8) Based on newly found information, Plaintiff believes Valley Health System,
 9 LLC is an additional proper Defendant who also placed pre-recorded calls to her
 10 cellular phone in an attempt to reach a third party.

11) The parties have conferred to this amendment and HCA, INC. has been unable
 12 to agree to the relief sought at this time.

13 **LEGAL STANDARD**

14 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend
 15 his pleading once as a matter of course within twenty-one (21) days after serving it, or
 16 within twenty-one (21) days after service of a responsive pleading. Fed. R. Civ. P.
 17 15(a)(1). Otherwise, such as in this instance, the party must seek the court's leave or
 18 the opposing party's written consent to amend the pleading. See Fed. R. Civ. P.
 19 15(a)(2). The Supreme Court of the United States has unequivocally held that, in
 20 instances where leave of court is required for amendment, "Rule 15(a) declares that
 21 leave to amend shall be freely given when justice so requires; this mandate is to be
 22 heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962) (emphasis added) (internal
 23 quotations omitted). "Rule 15(a) prescribes a liberal standard and usually a court will
 24 look favorably on requests to amend." *U.S. v. Shaner*, No. Civ. A. 85-1372, 1992 WL
 25 154572, at *1 (E.D. Pa. June 16, 1992); see also *Bechtel v. Robinson*, 886 F.2d 644,
 26 652 (3d Cir. 1989) ("We have noted that the courts have shown a strong liberality in
 27 allowing amendments under Rule 15(a)."); *Dole v. Arco Chemical Co.*, 921 F.2d 484,
 28 486-487 (3d. Cir. 1990) ("[W]e have consistently held that leave to amend should be

1 granted freely.”). The Third Circuit has gone so far as to recognize the existence of a
 2 “general presumption in favor of allowing a party to amend pleadings.” *Boileau v.*
 3 *Bethlehem Steel Corp.*, 730 F.2d 929, 938 (3d Cir. 1984). This liberal approach
 4 “ensures that a particular claim will be decided on the merits rather than on
 5 technicalities.” *Dole*, 921 F.2d at 487. However, even with this liberal standard, courts
 6 will deny a motion to amend on grounds of dilatoriness or undue delay, prejudice, bad
 7 faith or futility. *See Alvin v. Suzuki*, 227 F.3d 107, 121 (3d Cir.2000); *Hill v. City of*
 8 *Scranton*, 411 F.3d 118, 134 (3d Cir.2005). If there is an absence of undue delay, bad
 9 faith, prejudice or futility, a motion for leave to amend a pleading should be liberally
 10 granted. *Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004). Courts have pointed out
 11 that no unfair prejudice should be found simply because a party has to defend against
 12 a better-pleaded claim.¹ Where a deficiency could be cured by an amendment, leave
 13 to amend should be granted.²

14 **ARGUMENT**

15 As stated above, in light of information Plaintiff recently learned, Plaintiff now
 16 moves this Court to grant Plaintiff leave to amend Plaintiff’s initial Complaint to
 17 include an additional party. Motions to amend should be granted as justice so requires
 18 and Plaintiff is entitled to relief from Defendant based upon a Complaint conforming
 19 to the evidence. As such, justice requires that Plaintiff be granted leave to amend the
 20 Complaint.

21 Motions to amend should only be denied if granting the motion would cause
 22 undue surprise or prejudice to the other party. At this stage of litigation and the nature
 23 of the requested amendment, Defendant’s strategy in defending this matter will be

25 ¹ *Popp Telcom, Inc. v. American Sharecom, Inc.*, 210 F.3d 928, 943 (8th Cir. 2000)
 26 (“The inclusion of a claim based on facts already known or available to both sides does
 27 not prejudice the non-moving party.”)

28 ² *Lopez v. Smith*, 203 F. 3d 1122, 1130 (9th Cir. 200) (leave to amend should be granted
 even if not requested).



1 minimally affected as Defendant and defense counsel have been aware of the additional
2 party and information giving rise to Plaintiff's need to amend the operative Complaint.
3 Additionally, Plaintiff's counsel has reached out to Defendant's counsel several times
4 regarding the necessary amendment to Plaintiff's Complaint, thus, Defendant should
5 not be unduly surprised.

6 Furthermore, both of the present parties have an interest in seeing that Valley
7 Health System, LLC is included in as a party in this action and held to account for any
8 violations of the law that it may have engaged in. Thus, for the foregoing reasons,
9 Plaintiff requests that the relief requested herein be granted.

10 **LOCAL RULE IA 1-3 (f)**

11 Pursuant to Local Rule IA 1-3 (f), counsel for Plaintiff certifies that she
12 conferred with opposing counsel in good faith and Defendant has been unable to agree
13 to the relief sought herein.

14 **CONCLUSION**

15 Based on the above, Plaintiff respectfully requests that the Court grant
16 Plaintiff's Motion for Leave to Amend Plaintiff's Complaint because justice does so
17 require. It would not cause undue surprise or prejudice to the Defendant because it does
18 not substantially change Defendant's defenses. In no way does it cause prejudice to
19 Defendant as Defendant is already preparing to defend this action in relatively the same
20 manner as it would after an amendment to the Complaint. Therefore, in weighing these
21 factors, this Court should grant Plaintiff's Motion for Leave to Amend Plaintiff's
22 Complaint to add Valley Health System, LLC as a defendant.

23
24 DATED this 17th day of March 2022.

25
26 Respectfully submitted,

27
28 /s/ Gustavo Ponce, _____
Gustavo Ponce, Esq.
Nevada Bar No. 15084
Mona Amini, Esq.



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ORDER

IT IS ORDERED that ECF No. 30 is GRANTED as unopposed. See ECF No. 31 ("HCA does not oppose the Motion to Amend given the liberal standard governing amendment.").

IT IS FURTHER ORDERED that Plaintiff must file her amended complaint by 8/19/2022.

IT IS SO ORDERED

DATED: 5:51 pm, July 18, 2022

Brenda Weksler
BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 17, 2022, a true copy of the foregoing was filed with the Clerk of the Court and served on the parties of record using the CM/ECF system.

Respectfully submitted,

/s/ Gustavo Ponce,

Gustavo Ponce, Esq.

Nevada Bar No. 15084

Mona Amini, Esq.

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